



Foreign Agricultural Service

GAIN Report

Global Agriculture Information Network

Required Report - public distribution

Date: 11/2/2001

GAIN Report #CH1065

China, People's Republic of

Food and Agricultural Import Regulations and Standards

Trademark Law Summary and Article

2001

Approved by:

Larry M. Senger

U.S. Embassy

Prepared by:

Ralph Gifford, Xiang Qing, Adam Branson

Report Highlights:

This report provides direction to an UNOFFICIAL electronic copy of the People's Republic of China *Trademark Law* and should be used as a guide only. This is a summary and article discussing change to the *Trademark Law*. Exporters should carefully discuss regulations and their application with Chinese importers to ensure that their interpretation of the regulations is accurate.

Includes PSD changes: No
Includes Trade Matrix: No
Annual Report
Beijing [CH1], CH

This report was prepared by the Office of Agricultural Affairs of the USDA/Foreign Agricultural Service in Beijing, People's Republic of China for U.S. exporters of domestic food and agricultural products. While every possible care was taken in the preparation of this report, information provided may not be completely accurate either because policies have changed since its preparation, or because clear and consistent information about these policies was not available. It is highly recommended that U.S. exporters verify the full set of import requirements with their foreign customers, who are normally best equipped to research such matters with local authorities, before any goods are shipped. FINAL IMPORT APPROVAL OF ANY PRODUCT IS SUBJECT TO THE IMPORTING COUNTRY'S RULES AND REGULATIONS AS INTERPRETED BY BORDER OFFICIALS AT THE TIME OF PRODUCT ENTRY.

Summary

The following is a summary of China's Trademark Law. Information about the law can be found at the China Intellectual Property Net web site, "<http://www.cnipr.com>". English text of China's Trademark Laws along with other laws may be found at the following web site: "<http://www.qis.net/chinalaw>". An Unofficial English language versions of the law is available at China's larger bookstores.

Trademark Law

China's trademark regime basically conforms to world standards, although problems remain with enforcement. In October 1989, China joined the Madrid Pact for protection of trademarks; the latter grants reciprocal trademark registration to member countries. China amended its trademark regime in February 1993 to add special regulations for criminal prosecution for trademark infringement.

China has a "first-to-register" system that requires no evidence of prior use or ownership, leaving registration of popular foreign trademarks open to anyone. The Unfair Competition Law extends Intellectual Property Right to trade redress. Under the trademark law, foreign parties must utilize the services of a registered Chinese agent to submit the trademark application. Preparation of the application may be done by foreign attorneys or the Chinese agent.

The following article was published in the official English-language newspaper China Daily, May 23-29, 1999 Vol.19 No. 5895 (BW No. 323):

"Law on trademarks updated: Legislative revision aims to improve protection of intellectual property rights.

China is drastically revising its Trademark Law to meet the needs of an economy in transition from central planning to rule by the market. The draft of the law has been finished and sent to concerned parties to solicit their opinions, said Lu Heben, an official with the Trademark Bureau of the State Administration of Industry and Commerce (SAIC). It will subsequently be submitted to SAIC for approval before it goes to the State Council and finally the National People's Congress for revision and approval.

The Trademark Law currently in use went into effect in 1983 and was revised in 1993. According to the present draft, four provisions of the present law will be canceled, 15 changed and 40 more added.

Registering for malicious purposes trademarks which are being used by others and have not been registered will be forbidden in the revised law. The provision is aimed at protecting the rights of trademark users by preventing the registration of others' trademarks for the purpose of selling them at exorbitant prices back to the users. The revision also intends to improve protection of intellectual property rights with more severe punitive measures.

It gives an explicit definition of trademark infringement. In case of infringement, damages should also cover a proper proportion of court costs and lawyer's fees. Fines for trademark infringement or counterfeit commodities will be 500 to 1,000 times the worth of a single counterfeit commodity. The present provisions stipulate that the fine should be one-half to five times the illegal income from trademark infringement or sales of counterfeit commodities. However, it has proved almost impossible to ascertain the actual illegal income for compensation purposes.

Moreover, as there is no specific stipulation concerning damages, in some cases they have hardly covered the lawyer's fees, which has dented enthusiasm for taking action to protect trademark rights. This is especially so in some foreign-related cases, insiders say. All this will be addressed in the revised law, into which special protection provisions for famous trademarks will also be written.

Taking account of economic globalization, there will also be clear stipulations granting the same rights to internationally registered trademarks which have applied territorial extension as to domestically registered ones. Procedures for applying for international registration by a domestic holder of a registered trademark will also be made clear in the revised law.

The revision will also allow anyone to apply for registration of a trademark and permit the co-ownership of a trademark. The important constructive elements of a trademark will be expanded. The revision is also expected to simplify trademark registration procedures, shorten the legal time limit and strengthen judicial supervision."